

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-196-E - ORDER NO. 2008-467

JULY 8, 2008

IN RE: Combined Application of South Carolina)	ORDER GRANTING
Electric and Gas Company for a Certificate)	CONFIDENTIALITY AND
of Environmental Compatibility and Public)	A PROTECTIVE ORDER
Convenience and Necessity and for a Base)	
Load Review Order for the Construction and)	
Operation of a Nuclear Facility in)	
Jenkinsville, South Carolina.)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the request of South Carolina Electric & Gas Company (“SCE&G” or “the Company”) for a declaration of confidentiality of certain information found in the Confidential Version of the Combined Application in this Docket, specifically certain information contained in Exhibit F, Chart A, in the introduction to Exhibit I, and in Exhibit I, Chart A. This information has been redacted from the public version of those exhibits.

SCE&G asserts that this information is confidential, in that it is related to the pricing and pricing terms of the Engineering, Procurement, and Construction Agreement (“EPC Contract”) between SCE&G and a consortium consisting of Westinghouse Electric Company, LLC and Stone & Webster, Inc. (collectively, “Contractor”). According to SCE&G, the EPC Contract contains confidentiality provisions that require SCE&G to protect proprietary information that the Contractor believes to constitute trade secrets and to be commercially sensitive. The Contractor has requested that SCE&G

maintain the confidentiality of certain information contained in the Combined Application in Exhibit F, Chart A, in the introduction to Exhibit I, and in Exhibit I, Chart A.

In keeping with the Contractor's request and the terms of the EPC Contract, SCE&G requests that this Commission find that the Confidential Version of the Combined Application contains protected information and issue a protective order barring the disclosure of this Combined Application under the Freedom of Information Act, S.C. Code Ann. Sections 30-4-10, et seq, S.C. Code Ann. Regs. 103-804(S)(1), or any other provision of law, except in its public form. SCE&G also notes that, pursuant to 26 S.C. Code Ann Regs. 103-804(S)(2), the determination of whether a document may be exempt from disclosure is within the Commission's discretion.

The Freedom of Information Act (FOIA) grants a public body like this Commission the discretion to withhold exempted materials from public disclosure. Campbell v. Marion County Hospital, 354 S.C. 274, 580 S.E. 2d 163, 166 (Ct. App. 2003). "Trade secrets" are one of the materials exempt from public disclosure under FOIA. See S.C. Code Ann. § 30-4-40 (a) (1). When the entire "trade secret" definition is read, it is evident "that the legislature intended the 'trade secret' exemption to protect an organization's studies or preparations in its quest to produce or sell its product or service..." Campbell v. Marion County Hospital, 580 S.E. 2d at 169. The information under consideration also falls within the definition of a "trade secret" pursuant to the South Carolina Trade Secrets Act. See S.C. Code Ann. § 39-8-20 (5). The data referenced

herein is clearly a compilation of information that has actual or potential commercial value.

FOIA also allows the Commission to exempt documents related to proposed contractual arrangements. “[C]onfidential proprietary information provided to a public body for economic development or contract negotiations purposes is not required to be disclosed.” S.C. Code Ann. § 30-4-40 (a) (5) (c). The Company is currently engaged in contract negotiations with vendors. We hold that to publicly reveal such information at this stage would harm the Company’s ability to get the lowest price.

This Commission believes that a public viewing of the cost information at this time would impair negotiations with vendors. Under the present scenario, we hold that an impairment of the ability to negotiate with vendors by public release of the information on the Jenkinsville facility would unduly infringe upon the Company’s rights and its customers’ interests in limiting SCE&G’s costs. Accordingly, our holdings on confidentiality in this matter are in concert with case and statutory law.

The requests for a declaration of confidentiality and the issuance of a protective order are granted. The specified information in the Combined Application shall be deemed confidential, and the disclosure of the stated information in the Combined Application shall be barred, subject to South Carolina statutory, regulatory, and case law. In the event disclosure of the information is sought, this Commission shall notify SCE&G. The requestor, SCE&G and the Contractor will then be provided with an opportunity for hearing on the matter before this Commission.

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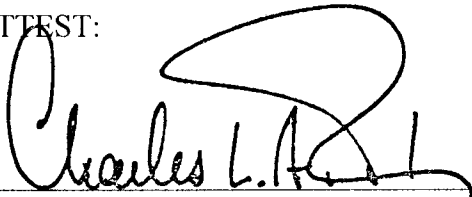
This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



Charles L.A. Terreni, Chief Clerk /Administrator

(SEAL)